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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/786,706	02/25/2004	Paul Swenson	22363.NP	3682
20551 7590 09/20/2007 THORPE NORTH & WESTERN, LLP. 8180 SOUTH 700 EAST, SUITE 350 SANDY, UT 84070			EXAMINER FIELDS, BENJAMIN S	
			ART UNIT 3609	PAPER NUMBER
			MAIL DATE 09/20/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/786,706

Applicant(s)

SWENSON ET AL.

Examiner

BENJAMIN S. FIELDS

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 21 February 2006.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

2. Claims 1-19 are rejected under 35 U.S.C. 102(a) as being based upon public use and knowledge of the invention.
3. Evidence of public use and knowledge of the invention prior to Applicant's earliest priority date of February 6, 2004 is provided as follows:

Exhibit	Description
U	Fundraising.com <URL: <a href="http://www.fundraising.com">http://www.fundraising.com</a> > [online], 1990-2003 [retrieved on 2007-09-12]. Retrieved from the Internet: <URL: <a href="http://www.archive.org">http://www.archive.org</a> >
V	PROQUEST, Milwaukee Journal Sentinel; Journal Sentinel Abstract (Summary) [online], April 2000 [retrieved on 2007-09-12]. Retrieved from the Internet: <URL: <a href="http://www.proquest.com">http://www.proquest.com</a> >
W	WEBSTER'S II New Riverside University Dictionary Webster 1996. p. 483

This evidence, taken as a whole, shows that the invention, as claimed, was both in "public use" and "knowledgeable" prior to February 6, 2004.

Referring to Claim 1: Exhibit U teaches a method for raising funds for a charitable cause comprising the steps of: identifying a charitable cause in need of funding (Exhibit U //The website located at [www.fundraising.com](http://www.fundraising.com) shows that the "Drill Team" is in need of funding//); providing a plurality of flags to comprise a healing field; linking a display of the healing field to the charitable cause in need of funding; displaying the healing field as part of a public awareness campaign; selling the plurality of flags that are displayed in the healing field and donating proceeds to the charitable cause in need of funding.

The Examiner notes that, according to Exhibit W, a flag is defined to be [page 483]: "1. A piece of cloth having a distinctive size, color, and design used as a symbol, standard, signal, or emblem". As such, in reference to the site mentioned supra at Exhibit U, a flag, by the Examiner, is construed to be any cloth bearing some sort of distinctive size, color, and design.

Henceforth, such flags are construed to be, according to Exhibits V and W, T-shirts, which are for sale for fund raising purposes.

Referring to Claim 2: Exhibit U discloses a method, wherein the step of providing a plurality of flags to comprise a healing field further comprises the step of identifying a historical event to be symbolized by the plurality of flags (Exhibit U //The 'historical event' mentioned is the game that is to take place//).

Referring to Claim 3: Exhibit U shows a method, wherein the step of displaying the healing field further comprises the step of positioning the plurality of flags in a predetermined pattern (Exhibit U, V//Exhibit U refers to a predetermined pattern when referencing the drill team dances that are to take place//).

Referring to Claim 4: Exhibit U discloses a method, wherein the predetermined pattern can be that of a geometric pattern.

In addition, the Examiner notes applicants disclosure of the type of geometric pattern, however, geometric pattern (i.e. aesthetics) is only found in the nonfunctional descriptive material and does not alter how the method operates. This type of data qualifies as nonfunctional since there is no interrelationship between the type of pattern and the method for operating the system - it does not matter what type of pattern or nonfunctional descriptive material is claimed. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

Referring to Claim 5: Exhibit U teaches a method, wherein the predetermined pattern can be that of a linear array placed along an area selected from the group consisting of a path, a body of water, a river, a building, a structure, a road, a highway, a trail, a hill, a mountain, and a military base.

In addition, the Examiner notes applicants disclosure of the type of geometric pattern, however, geometric pattern (i.e. aesthetics) is only found in the nonfunctional descriptive material and does not alter how the method operates. This type of data qualifies as nonfunctional since there is no interrelationship between the type of pattern and the method for operating the system - it does not matter what type of pattern or nonfunctional descriptive material is claimed. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, see *In re*

*Gulack, 703 F.2d 1381, 1385, 217 USPQ 401 (Fed. Cir. 1983); In re Lowry, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).*

Referring to Claim 6: Exhibits U and V disclose a method further comprising the step of incorporating information within the predetermined pattern (Exhibit U, V//Here, information is incorporated by means of the names being placed on the shirts that the team is expected to wear during the fund raising event, etc.//).

Referring to Claim 7: Exhibit V shows a method, further comprising the step of incorporating a graphic message within the predetermined pattern (Exhibit V//The site allows the graphics logo on the shirt to be in the form of a message//).

Referring to Claim 8: Exhibits U and V disclose a method, wherein the step of linking a display of the healing field to the charitable cause further comprises the step of advertising a purpose for the field of flags, wherein the purpose links the field of flags to the charitable cause (Exhibit U, V//The website disclosed herein serves as a means of advertisement//).

Referring to Claim 9: Exhibits U and V teach a method, wherein the step of advertising the purpose for the field of flags further comprises the step of advertising through a medium selected from the group consisting of radio stations, television stations, newspapers, magazines, and internet sites (Exhibit V//The site permits advertisement via various means as listed on its site//).

Referring to Claim 10: Exhibits U and V disclose a method further comprising the step of obtaining one or more sponsors to pay for the plurality of flags in the healing

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field (Exhibit U, V//Requests are made via the site for sponsors to 'pledge' some sort of fund raising for the goods/services rendered//).

Referring to Claim 11: Exhibits U and V show a method, wherein the one or more sponsors comprises a person that pays to sponsor one or more flags in the plurality of flags (Exhibit U, V//The site allows an individual to sponsor at least one of the fund raising T-shirts therein//).

Referring to Claim 12: Exhibits U and V disclose a method, wherein the one or more sponsors comprises an organization that pays to sponsor one or more flags in the plurality of flags (Exhibit U, V//Sponsor companies and organizations from across the globe can access the site, thus allowing them the ability to sponsor their fund raising event//).

Referring to Claim 13: Exhibits U and V teach a method, wherein the step of selling the plurality of flags further comprises the step of selling the plurality of flags through an auction (Exhibit U//The site composes an auction type feature/functionality [like eBay, etc.] which allows sale of multiple T-shirts for the fund raising event//).

Referring to Claim 14: Exhibits U and V disclose a method, wherein the auction is an internet auction (Exhibit U//The site is, with any doubt accessible via the internet//).

Referring to Claim 15: Exhibit U shows a method, wherein the step of selling the plurality of flags further comprises the step of selling the plurality of flags through an advertising campaign (Exhibit U//The entire site is merely one entire advertising campaign//).

Referring to Claim 16: Exhibits U and V disclose a method, wherein the step of selling the plurality of flags further comprises the step of placing advertisements near the field of flags (Exhibit U, V//While using the site as the main avenue for sales to the fund raising campaign, the system allows additional means to accomplish it's goal – Advertisement is on the site for sale of the T-shirts in order to fund the campaign//).

Referring to Claim 17: Claim 17 has been rejected on the same basis, as is Claim 9 as mentioned supra.

Referring to Claim 18: Exhibits U and V disclose a method, wherein the step of advertising through the medium of magazines further comprises the step of advertising through magazines that are substantially specific to a purpose for the healing field (Exhibit U, V//According to the definition of a flag as mentioned supra, a simple collection of a group of garments with some sort of distinctive mark, etc. etched upon it would constitute a flag. As such, according to Exhibits U and V, T-shirts placed on sale for fund raising purposes and would satisfy the 'healing field' requirement//).

Referring to Claim 19: The Examiner notes that Claim 19 simply outlines a means for accomplishing such system as already mentioned supra. As such, Claim 19 has been rejected on the same basis, as is Claim 1 as mentioned supra.

### ***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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Lawrence (US PG Pub. No. 2002/0126073) teaches a charitable transaction risk management clearinghouse.

Any inquiry concerning this communication should be directed to Benjamin S. Fields at telephone number 571.272.9734. The examiner can normally be reached Monday through Thursday, 9am to 7pm. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoi Tran can be reached at (571) 272-6919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Benjamin S. Fields

10 September 2007

  
MATTHEW S. GART  
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